

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

SERVICE EMPLOYEES')	
INTERNATIONAL UNION, LOCAL 50,)	
)	
Petitioner,)	
)	
vs.)	
)	Public Case No. R 88-001
MERAMEC VALLEY R-3 SCHOOL)	
DISTRICT,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing by Service Employees' International Union, Local 50, of a petition for certification as public employee representative of certain employees of the Meramec Valley R-3 School District. A hearing was held on September 30, 1987, in Pacific, Missouri, at which representatives of Local 50 and the School District were present. The case was heard by State Board of Mediation Chairman Mary Gant. Upon agreement by the parties, the case was submitted for decision to employer member Milton Talent and employee member James O'Mara. The State Board of Mediation is authorized to hear and decide the issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo 1978.

At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Meramec Valley R-3 School District prepares lunches for approximately 3,400 students throughout the district which consists of one high school, one junior high school and six elementary schools. The school district employs approximately 25 persons as cooks or head cooks who are assigned to the various schools. Of those 25 employees there are eight designated as head cooks. One head cook and four regular cooks are assigned to the high school, whereas the junior high school is assigned one head cook and three regular cooks. At the elementary schools, there is generally one head cook with one to three regular cooks who assist in the meal preparation.

The head cook is charged with responsibility for the day to day operation of the cafeteria in their school. At some of the elementary schools, a school principal is not present every day. Accordingly, the head cook is without any direct supervision by the school district much of the time. Further, the record as a whole indicates that there is little direct involvement with the cafeteria operation by the school principal, assistant superintendent or superintendent of schools. Instead, the head cook of each school is given much discretion in the daily operation of their cafeteria.

Besides routine cooking chores, the head cooks are responsible for establishing weekly menus for the students. To that end they meet every six weeks with the other head cooks and the superintendent of schools. The head cooks alternately decide what meals are to be served for the six-week period. Based on the anticipated menus, the head cooks order the necessary food and supplies.

The head cooks play a significant role in the hiring of new employees. Testimony at the hearing established that generally a head cook will make a recommendation that a person be hired to the building principal who forwards that recommendation to the assistant superintendent of schools. The assistant superintendent then submits the application to the Board of Education which makes final decisions on such matters. One head cook testified that she had recommended the

hiring of five different cooks and that those recommendations were followed. On some occasions the head cook would interview various applicants before making the recommendation to the building principal.

The head cooks also play a significant role in the evaluation and retention of other employees. The head cooks complete an annual evaluation form in which they grade the lunchroom personnel on various matters such as cleanliness, conscientiousness, and punctuality. These evaluation forms are placed in the permanent personnel file of the employee and are used by the Board of Education in deciding whether to rehire the employee for the next school year.

The school district has no written policy concerning discipline of employees. On one occasion a head cook verbally warned a subordinate cook concerning excessive absenteeism. When that warning went unheeded, the head cook brought the matter before the school principal and the superintendent. Although disciplinary matters are infrequent, it is clear that the head cooks who work with the regular cooks on a daily basis are responsible for bringing any disciplinary matter to the attention of the building principal.

The head cook is responsible for seeing that the necessary help is available to meet the students' needs. Should another cook be absent, the head cook has the authority to call in a substitute cook without approval of any other person within the school district. The head cook keeps track of so-called "extra hours" earned by each cafeteria. The district works on a basis by which the head cooks are allowed to authorize hours worked by regular cooks based on the number of meals served. The head cook calculates those hours and once an excess is accumulated, the head cook has the discretion to call in another cook without consulting the school principal or superintendent.

The head cooks are paid on a salaried, monthly basis by which they are credited for six hours of work per day without regard to the actual time spent on the premises.

The head cooks are paid an extra 20 cents if they supervise another cook and an extra 25 cents if they supervise more than one cook.

CONCLUSIONS OF LAW

Local 50 has petitioned to be certified as public employee representative of a bargaining unit comprised of approximately 25 cooks employed by the Meramec Valley R-3 School District. The school district contends that the eight cooks classified as head cooks are supervisory employees and therefore should be excluded from the bargaining unit. Local 50, on the other hand, contends that the head cooks are not true supervisors and therefore should be included in the bargaining unit. An appropriate bargaining unit is defined by Section 105.500 (1) RSMo 1978 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest." However, the Board has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. St. Louis Firefighters Association, Local 73, v. City of St. Louis, Case No. 76-013 (SBM 1976); Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d 581 (Mo.App. 1977).

In determining the supervisory status of employees within bargaining units, the Board has consistently examined the following factors:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees.
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.
- (3) The number of employees supervised and the number of other persons exercising greater, similar or lesser authority over the same employees.

- (4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees.
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.

The school district contends that based upon the above factors, the head cooks are true supervisors. Local 50, however, argues that the head cooks' authority is closer to that of a leadman and therefore should not be considered supervisory personnel. For the reasons set out below, the Board holds that the head cooks are true supervisors that must be excluded from the bargaining unit.

The facts of this case are particularly troublesome because, as pointed out by Local 50, the ratio of head cooks to regular cooks is one:two, a ratio that would normally indicate non-supervisory status. Further, the head cooks spend much of their time doing work similar to that done by subordinate cooks, which would indicate that the head cooks' authority is closer to that of a leadman rather than a true supervisor. However, the amount of independent discretion given the head cooks with little if any direct supervision by the school district, convinces the Board that the head cooks are indeed true supervisors. As stated in Golden Valley Memorial Hospital v. Missouri State Board of Mediation, supra at 583, the Board is responsible for identifying those employees whose "duties involve acting directly or indirectly in the interest of the employer in relation to other employees." In this case, because there is no middle level supervisor who oversees the day to day operations of the cafeteria on behalf of the school district, the head cooks must be considered as acting directly in the interest of the employer in relation to other employees especially as it concerns hiring and retention of other employees.

The record as a whole clearly indicates that the head cooks play a significant role in the hiring of new employees. The head cooks make recommendations to the

building principal who forwards that recommendation to the assistant superintendent who reports to the board of education. Because the head cooks are the only employees able to view the work of prospective employees as substitute cooks on a day to day basis, their recommendation to hire the employee on a full time basis must be given much weight. At the hearing, there was no evidence that the board of education had ever failed to follow the recommendation of a head cook. Also, the evaluations done by the head cooks concerning performance of other employees are heavily relied upon in deciding whether that employee should be retained for the following school year. Finally, it is undisputed that the head cooks are paid a higher rate of pay merely because they supervise other employees. In view of all of the foregoing, the Board must conclude that the head cooks are true supervisors and therefore must be excluded from the appropriate bargaining unit.

DECISION

It is the decision of the State Board of Mediation that an appropriate bargaining unit of employees is as follows: all full time cooks employed by the Meramec Valley R-3 School District, excluding the head cooks.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the unit found appropriate, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before

the election. Those eligible to vote shall vote whether or not they desire to be represented for the purposes of exclusive representation by Local 50, Service Employees International Union.

It is hereby ordered that the school district shall submit to the Chairman of the State Board of Mediation, as well as to Local 50, within seven days from the date of receipt of this decision an alphabetical list of names and addresses of employees in the unit determined above to be appropriate who were employed during the payroll period immediately preceding the date of this decision.

Signed this 25th day of November, 1987.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant
Mary L. Gant, Chairman

/s/ James O'Mara
James O'Mara, Employee Member

/s/ Milton Talent
Milton Talent, Employer Member